STATE OF MICHIGAN

COURT OF APPEALS

In re THOMAS P. and JANET A. HENDY REVOCABLE TRUST.

STANLEY H. PEARCE, Trustee,

Petitioner-Appellee,

v

NICHOLAS J. CARLTON, PETER H. CARLTON, and KATHRYN CARLTON-BEH,

Respondents-Appellants,

and

KENNETH HENDY, BEATRICE HENDY, CAROL BECKWITH, MARGARET KRUSE, and GEORGE HENDY,

Appellees.

UNPUBLISHED
April 4, 2006

No. 257228
Ingham Probate Court
LC No. 04-000420-TV

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Respondents appeal as of right from an order of the probate court resolving the dispute involving the beneficiaries and their respective shares. We affirm.

Thomas P. Hendy and Janet A. Hendy, husband and wife, executed a revocable trust on February 25, 1994. Thomas died in 1996, and Janet died on February 7, 2003. Before the trust was disbursed to the beneficiaries, a dispute arose regarding article V, paragraph 3.E of the trust document. This residuary clause provided for the distribution of the remaining trust balance

after payment of certain expenses and taxes and a payment of ten percent of the trust corpus to two named churches.[1] At issue is the following language:

> The balance of the Trust Estate is to be divided equally and distributed to the following: George E. Hendy, Edward F. Hendy, Kenneth W. Hendy (whose share is to be made payable to Kenneth and his wife Beatrice Elizabeth Hendy), Margaret Kruse, with an equal share divided among the children of the following deceased siblings of the Settlors: John G. Carlton, Samuel G. Carlton, Elenor Black, Elizabeth Christianson, and Elsie H. Stimson. In all cases distribution is to be per stirpes. [Emphasis in original.]

During probate, two interpretations of this passage developed. According to the interpretation advanced by respondents, the balance identified[2] was to be divided into nine shares, entitling each of the settlors' siblings, whether living or deceased, to a one-ninth share to be distributed per stirpes if necessary. According to the interpretation advanced by appellees, the balance was to be divided into five shares, with the first listed siblings, who were alive when the trust document was executed, each taking a one fifth share of the balance, while the remaining one-fifth share would be divided per stirpes by the children of those siblings who were deceased when the trust was created. Unable to resolve the disputed language, the then trustee, Stanley H. Pearce, petitioned the probate court for a ruling regard the proper distribution. Focusing on the "equal share" language proceeding the listing of the deceased siblings, the probate court agreed with the interpretation advanced by appellees.

Interpretation of an testamentary instrument based solely on the language of the document presents a question of law subject to de novo review. *In re Bem Estate,* 247 Mich App 427, 432-433; 637 NW2d 506 (2001). Whether a term is ambiguous is similarly a question of law subject to de novo review. *Id.* The primary goal of the probate court in construing a testamentary instrument is to determine and give effect to the intent of the settlor. *In re Woodworth Trust,* 196 Mich App 326, 327; 492 NW2d 818 (1992). "Where there is no ambiguity, that intention is to be gleaned from the four corners of the instrument." *Id.* The probate court must interpret the document in a way that gives affect to every word in the document. See *Detroit Bank & Trust Co v Grout*, 95 Mich App 253, 268-269; 289 NW2d 898 (1980).

Appellant first argues that the "number of shares" language is defective, ambiguous, and susceptible to multiple interpretations. Specifically, it is alleged that the phrase "an equal share divided" is patently ambiguous.[3] We disagree. "A contract is ambiguous only if its language is

---

[1] None of the parties have ever challenged the gifts to the churches.

[2] Hereinafter we will use the term "balance" to refer to the balance of the marital trust proceeds minus payment of specified taxes and expenses and the gifts to the two named churches.

[3] An ambiguity may be either patent or latent. *In re Woodworth Trust, supra* at 327-328. Respondents argue solely that the trust is patently ambiguous. "A patent ambiguity exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language." *Id.*

reasonably susceptible to more than one interpretation." *Gortney v Norfolk & W R Co*, 216 Mich App 535, 540; 549 NW2d 612 (1996). "The fact that the parties dispute the meaning of [a provision] . . . does not, in itself, establish an ambiguity." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 14; 614 NW2d 169 (2000). By using the precise phrase "with an equal share divided among the children of the following deceased siblings," the settlors explicitly provided that one share, equal to the shares provided for the siblings living when the trust was created, was to be divided among the children of the then-deceased siblings. Specifically, the "equal share" language identifies, by reference to the shares preceding the phrase, a division equivalent to that identified for "George E. Hendy, Edward F. Hendy, Kenneth W. Hendy . . . , [and] Margaret Kruse." The phrase "divided among" clearly indicates that the "equal share" so identified is then to be separated or dealt out to the persons thereafter identified. Thus, because respondents' interpretation directly contradicts the singular term "an equal share divided," the distribution clause is not reasonably susceptible to respondents' interpretation, and the clause is unambiguous. See *Cole, supra* at 14.

Respondents also argue that the trial court erred in failing to even consider the per stirpes provision and that the per stirpes provision indicates that a nine share distribution is appropriate. We disagree. Review of the transcript reveals that the trial court discussed and resolved the provision by ruling that the balance was to be divided into five shares and further ordered a per stirpes distribution to the children of all deceased siblings.

Respondents also argue that the language, "In all cases distribution is to be per stirpes," somehow qualifies or supercedes the directive that "an equal share [is to be] divided." We disagree. "Per stirpes" is defined as "[p]roportionally divided between beneficiaries according to their deceased ancestor's share." Black's Law Dictionary (7th ed), p 1164. "If a governing instrument calls for property to be distributed 'per stirpes', the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants." MCL 700.2718(2). Based on the plain language of the trust document, the trial court, in essence, concluded that there were five designated ancestors, four then living brothers and sisters and the children of the deceased brothers and sisters. Therefore, in all cases involving a designated ancestor, the distributed was to be per stirpes. We agree with the trial court and conclude that the per stirpes provision was not meant to describe how the balance was to be divided among the siblings, but how the already divided balance was to be thereafter subdivided and distributed to the children of the listed deceased siblings.

In sum, the probate court's interpretation of the language of the residuary clause in issue properly reconciled the singular term "an equal share divided" with the per stirpes provision, thereby appropriately considering and giving meaning to every word in the document. *Grout, supra*. Had the settlors intended for a nine-share distribution, they could have clearly provided for such a division. The intent of the settlors as deemed from the four corners of the instrument, *Woodworth, supra*, provides for a five-share division to be distributed per stirpes.

Affirmed.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Karen M. Fort Hood